

1 State of New Hampshire Banking Department

2	In re the Matter of:) Case No.: 10-001
)
3	State of New Hampshire Banking)
4	Department,) Order to Show Cause and
)
5	Petitioner,) Cease and Desist Order
)
6	and)
)
7	Joseph William Patrick Clancey,)
)
8	Discount Mortgage Warehouse Inc (d/b/a)
)
9	Globelend Mortgage), and Oleg Lusher,)
)
10	Respondents)

11 NOTICE OF ORDER

12 This Order to Show Cause and Cease and Desist Order commences an
13 adjudicative proceeding under the provisions of RSA Chapter 397-A and RSA
14 Chapter 541-A.

15 LEGAL AUTHORITY AND JURISDICTION

16 Pursuant to RSA 397-A:17, the Commissioner of the New Hampshire
17 Banking Department (hereinafter "Department") has the authority to issue an
18 order to show cause why license revocation and penalties for violations of
19 New Hampshire Banking laws should not be imposed.

20 Pursuant to RSA 397-A:17,II(a), the Commissioner has the authority to
21 order or direct persons subject to RSA Chapter 397-A to cease and desist
22 from conducting business, including immediate temporary orders to cease and
23 desist.

24 Pursuant to RSA 397-A:17,II(b), the Commissioner has the authority to
25 order or direct persons subject to RSA Chapter 397-A to cease any harmful

1 activities or violations of RSA Chapter 397-A, including immediate
2 temporary orders to cease and desist.

3 Pursuant to RSA 397-A:17,II(c), the Commissioner has the authority to
4 enter immediate temporary orders to cease business under a license if the
5 Commissioner has determined that such license was erroneously granted or
6 the licensee is currently in violation of RSA Chapter 397-A, or rules or
7 order thereunder.

8 Pursuant to RSA 397-A:17,II(e)(1) the Commissioner has the authority
9 to remove or ban from office or employment, including license revocation,
10 any person conducting business under RSA Chapter 397-A who violates RSA
11 Chapter 397-A.

12 Pursuant to RSA 397-A:17,II(e)(4) the Commissioner has the authority
13 to remove or ban from office or employment, including license revocation,
14 any person conducting business under RSA Chapter 397-A if by a
15 preponderance of evidence the Commissioner determines that the person no
16 longer demonstrates the financial responsibility, character, and general
17 fitness such as to command the confidence of the community and to warrant a
18 determination that the person subject to RSA Chapter 397-A will operate
19 honestly, fairly, and efficiently within the purposes of RSA Chapter 397-A.

20 Pursuant to RSA 397-A:17,II(f) the Commissioner has the authority to
21 deny, suspend, revoke, condition, or decline to renew a license if an
22 applicant or licensee fails at any time to meet the requirements of RSA
23 397-A:5,IV-c or RSA 397-A:5,IV-d, or withholds information or makes a
24 material misstatement in an application for a license or renewal of a
25 license. RSA 397-A:5,IV-c,(a)(5) states the Commissioner shall not issue a

1 mortgage loan originator license unless the Commissioner makes at a
2 minimum, inter alia, a finding that the applicant has demonstrated
3 financial responsibility, character, and general fitness such as to command
4 the confidence of the community and to warrant a determination that the
5 mortgage loan originator will operate honestly, fairly, and efficiently
6 within the purposes of RSA Chapter 397-A. RSA 397-A:5,IV-d(a)(1) states
7 that, in addition to other provisions of New Hampshire law and rules, in
8 order to be eligible to renew a license, a mortgage originator shall, inter
9 alia, meet and continue to meet the minimum standards for license issuance
10 under RSA 397-A:5,IV-c.

11 Pursuant to RSA 397-A:17,VIII, in addition to any other penalty
12 provided for under RSA Chapter 397-A or RSA 383:10-d, after notice and
13 opportunity for hearing, the Commissioner may enter an order of rescission,
14 restitution, or disgorgement of profits directed to a person who has
15 violated RSA Chapter 397-A, or a rule or order thereunder.

16 Pursuant to RSA 397-A:17,IX, in addition to any other penalty
17 provided for under RSA Chapter 397-A, after notice and opportunity for
18 hearing, the Commissioner may assess fines and penalties against a mortgage
19 loan originator in an amount not to exceed \$25,000.00 (for each violation)
20 if the Commissioner finds the mortgage loan originator has violated or
21 failed to comply with the S.A.F.E. Mortgage Licensing Act of 2008, Public
22 Law 110-289, Title V or any regulation or order issued thereunder. Each of
23 the acts specified shall constitute a separate violation.

24 Pursuant to RSA 397-A:17,X, an action to enforce any provision of RSA
25 Chapter 397-A shall be commenced within 6 years after the date on which the

1 violation occurred.

2 Pursuant to RSA 397-A:18, the Department has the authority to issue a
3 complaint setting forth charges whenever the Department is of the opinion
4 that the licensee or person over whom the Department has jurisdiction is
5 violating or has violated any provision of RSA Chapter 397-A, or any rule or
6 order thereunder.

7 Pursuant to RSA 397-A:18,II, the Department has the authority to issue
8 and cause to be served an order requiring any person engaged in any act or
9 practice constituting a violation of RSA Chapter 397-A or any rule or order
10 thereunder, to cease and desist from violations of RSA Chapter 397-A.

11 Pursuant to RSA 397-A:20,IV the Commissioner may issue, amend, or
12 rescind such orders as are reasonably necessary to comply with the
13 provisions of RSA Chapter 397-A.

14 Pursuant to RSA 397-A:21, the Commissioner has the authority to
15 suspend, revoke or deny any license and to impose administrative penalties
16 of up to \$2,500.00 for each violation of New Hampshire banking law and
17 rules.

18 Pursuant to RSA 397-A:21,VI, the attorney general on the
19 Commissioner's behalf, may, with or without prior administrative action by
20 the Commissioner, bring an action against any person in any superior court
21 in New Hampshire to enjoin the acts or practices and to enforce compliance
22 with RSA Chapter 397-A or any rules or orders thereunder. Upon a proper
23 showing, a permanent or temporary injunction, bar, restraining order, or
24 writ of mandamus shall be granted and a receiver may be appointed for the
25 defendant or the defendant's assets. The court shall not require the

1 Commissioner or attorney general to post a bond. The court shall have the
2 power to enforce obedience to such injunction, in addition to all of the
3 court's customary powers, by a fine not exceeding \$10,000.00 or by
4 imprisonment, or both. In a proceeding in superior court under RSA Chapter
5 397-A:21,VI where the state prevails, the Commissioner and the attorney
6 general shall be entitled to recover all costs and expenses of
7 investigation, and the court shall include the costs in its final judgment.

8 Pursuant to RSA 383:10-d, the Commissioner shall investigate conduct
9 that is or may be an unfair or deceptive act or practice under RSA Chapter
10 358-A and exempt under RSA 358-A:3,I or that may violate any of the
11 provisions of Titles XXXV and XXXVI and administrative rules adopted
12 thereunder. The Commissioner may hold hearings relative to such conduct and
13 may order restitution for a person or persons adversely affected by such
14 conduct.

15 **NOTICE OF RIGHT TO REQUEST A HEARING**

16 The above named Respondents have the right to request a hearing on
17 this Order to Show Cause and Cease and Desist Order, as well as the right to
18 be represented by counsel at each Respondent's own expense. All hearings
19 shall comply with RSA Chapter 541-A. Any such request for a hearing shall be
20 in writing, and signed by the Respondent or the duly authorized agent of the
21 above named Respondent, and shall be delivered either by hand or certified
22 mail, return receipt requested, to the Banking Department, State of New
23 Hampshire, 53 Regional Drive, Suite 200, Concord, NH 03301. Such hearings
24 will be scheduled within 10 days of the Department's receipt of the request.
25 If a Respondent fails to appear at the hearing after being duly notified, such

1 person shall be deemed in default, and the proceeding may be determined
2 against the Respondent upon consideration of the Order to Show Cause and Cease
3 and Desist Order, the allegations of which may be deemed to be true.

4 If any of the above named Respondents fails to request a hearing within
5 30 calendar days of receipt of such order or reach a formal written and
6 executed settlement with the Department within that time frame, then such
7 person shall likewise be deemed in default, and the orders shall, on the
8 thirty-first day, become permanent, and shall remain in full force and effect
9 until and unless later modified or vacated by the Commissioner, for good cause
10 shown.

11 **STATEMENT OF ALLEGATIONS, APPLICABLE LAWS AND REQUEST FOR RELIEF**

12 The Staff Petition dated January 22, 2010 (a copy of which is attached
13 hereto) is incorporated by reference hereto.

14 **ORDER**

15 WHEREAS, finding it necessary and appropriate and in the public
16 interest, and consistent with the intent and purposes of the New Hampshire
17 banking laws;

18 WHEREAS, finding that the allegations contained in the Staff Petition,
19 if proved true and correct, form the legal basis of the relief requested;
20 and

21 WHEREAS, finding that the allegations contained in the Staff Petition,
22 if proved by a preponderance of the evidence that the above named persons no
23 longer demonstrate the financial responsibility, character, and general
24 fitness such as to command the confidence of the community and to warrant a
25 determination that the persons subject to RSA Chapter 397-A will operate

1 honestly, fairly, and efficiently within the purposes of RSA Chapter 397-A,
2 form the legal basis of the relief requested;

3 It is hereby ORDERED, that:

- 4 1. Respondent Joseph William Patrick Clancey ("Respondent
5 Clancey") is hereby ordered to cease and desist from
6 conducting business regulated by RSA Chapter 397-A in New
7 Hampshire;
- 8 2. Respondent Clancey is hereby ordered to cease and desist
9 from violating New Hampshire state law and federal law and
10 any rules or orders thereunder;
- 11 3. Respondent Clancey is hereby ordered to cease and desist from
12 destroying documents, including but not limited to original,
13 photocopies of, and electronic versions of consumer loan
14 files and supporting documentation thereof;
- 15 4. Respondent Clancey is hereby ordered to cease and desist from
16 directly or indirectly taking loan files (originals, copies
17 and electronic versions, including the computers themselves);
- 18 5. Respondent Clancey is hereby ordered to cease and desist from
19 hiding any additional loan files and computers he may have in
20 his possession and is hereby ordered to immediately bring
21 them to the Department;
- 22 6. Respondent Clancey shall show cause why penalties in the
23 amount of \$3,442,500.00 should not be imposed against him plus
24 any additional penalty not to exceed \$25,000.00 for each
25 violation (\$4,300,000.00) pursuant to RSA 397-A:17, IX;

1 7. Respondent Discount Mortgage Warehouse Inc (d/b/a Globelend
2 Mortgage) ("Respondent Globelend") shall show cause why
3 penalties in the amount of \$675,000.00 should not be imposed
4 against it;

5 8. Respondent Oleg Lusher ("Respondent Lusher") shall show cause
6 why penalties in the amount of \$675,000.00 should not be
7 imposed against him;

8 9. The above named Respondents shall show cause why the cost of
9 examination and/or investigation should not imposed upon
10 them;

11 10. Nothing in this Order to Show Cause and Cease and Desist
12 Order shall prevent the Department from taking any further
13 administrative action under New Hampshire law;

14 11. Nothing in this Order to Show Cause and Cease and Desist
15 Order shall prevent the Attorney General from bringing an
16 action against the above named Respondents in any New
17 Hampshire superior court, with or without prior
18 administrative action by the Commissioner;

19 12. The above named Respondents shall be jointly and severally
20 liable for the above amounts alleged in Paragraphs 1 through
21 11 above;

22 13. Respondent Clancey shall show cause why, in addition to the
23 penalties listed in Paragraphs 1 through 12 above, Respondent
24 Clancey's license should not be revoked;

25 14. Respondent Globelend Mortgage and Respondent Lusher shall

1 show cause why, in addition to the penalties listed in
2 Paragraphs 1 through 12 above, Respondent Globelend's license
3 should not be revoked;

4 It is hereby further ORDERED that:

5 15. Along with the administrative penalties listed for the above
6 named Respondents, any rescission, restitution or
7 disgorgement of profits shall be immediately paid; and

8 16. Failure to request a hearing within 30 days of the date of
9 receipt or valid delivery of this Order to Show Cause and
10 Cease and Desist Order shall result in a default judgment
11 being rendered and administrative penalties imposed upon the
12 defaulting Respondent.

13 SIGNED,

14
15 Dated: 01/22/10

15 /s/
16 PETER C. HILDRETH
17 BANK COMMISSIONER

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 10-001
)
 3 State of New Hampshire Banking)
)
 4 Department,) Staff Petition
)
 5 Petitioner,) January 22, 2010
)
 6 and)
)
 7 Joseph William Patrick Clancey,)
)
 8 Discount Mortgage Warehouse Inc (d/b/a)
)
 9 Globelend Mortgage), and Oleg Lusher,)
)
 10 Respondents)

11 I. STATEMENT OF ALLEGATIONS

12 The Staff of the Banking Department, State of New Hampshire (hereinafter
13 "Department") alleges the following facts:

14 Facts Common on All Counts:

15 1. Respondent Joseph William Patrick Clancey (hereinafter
16 "Respondent Clancey") was licensed as a Mortgage Loan Originator
17 from April 1, 2009 until his license expired on December 31,
18 2009. Respondent Clancey could not renew his license with the
19 Department due to his failure to take the required examinations
20 and complete the required education. Respondent Clancey also
21 held Mortgage Loan Originator licenses in Connecticut, Maryland
22 and Massachusetts. According to the NMLS, he is currently
23 employed by Clearpoint Funding, Inc. (formerly Virgin Money USA,
24 Inc.).

25 2. Respondent Clancey was employed by Respondent Discount Mortgage

1 Warehouse Inc (d/b/a Globelend Mortgage) (hereinafter "Respondent
2 Globelend") as a Loan Officer from January 1, 2007 to August
3 2008.

4 3. Respondent Globelend was licensed as a Mortgage Broker from at
5 least September 5, 2006 (with an amended license date of
6 September 21, 2007) until it surrendered its license on December
7 2, 2008.

8 4. Respondent Oleg Lusher (hereinafter "Respondent Lusher") was 100%
9 owner and President of Respondent Globelend, when licensed by the
10 Department.

11 Violation of RSA 397-A:3,III Representing More Than One Mortgage Banker or
12 Mortgage Broker (1 Count):

13 Violation of RSA 397-A:11,I via RSA 397-A:2,III Persons Subject to or
14 Licensed by RSA Chapter 397-A Must Comply with Other New Hampshire State Law
15 (172 Counts):

16 Violation of RSA 397-A:12,XV Fraudulent and Knowing Removal of Records and
17 Computer Records (172 Counts):

18 Violation of RSA 397-A:14:IV(a) via RSA 397-A:12,XV Obtained Property by
19 Fraud (172 Counts):

20 Violation of RSA 397-A:14,IV(f) Failure to Comply with RSA Chapter 397-A or
21 Other New Hampshire State Law (172 Counts):

22 Violation of RSA 397-A:14,IV(n) Engaged in Unfair, Deceptive, Unethical or
23 Fraudulent Business Practices (172 Counts):

24 Violation of RSA 397-A:17,I(a) Violation of RSA Chapter 397-A Generally (172
25 Counts):

1 Violation of RSA 397-A:17, I(b) Failing to Meet Standards Established by RSA

2 Chapter 397-A (172 Counts):

3 Violation of RSA 397-A:17, I(k) Engaged in Dishonest or Unethical Practices

4 (172 Counts):

5 5. Paragraphs 1 through 4 are hereby realleged as fully set forth
6 herein.

7 6. The Windham Police Department notified the Department on January
8 6, 2010 that Respondent Clancey had nine (9) boxes of loan files,
9 four (4) CPUs (computer's central processing unit) and one (1)
10 laptop (collectively herein, "Loan Files") he had allegedly
11 obtained from his previous employers, Respondent Globelend and
12 Wells Fargo Home Mortgage.

13 7. On January 7, 2010, Department's Examiners met with a detective
14 from the Windham Police Department, who showed the Examiners four
15 loan files as a sample of the documentation in the Loan Files.

16 8. The Department's Examiners determined that the four loan files
17 were indeed consumer mortgage files.

18 9. The detective from the Windham Police Department then escorted
19 the Department's Examiners to Respondent Clancey's former
20 residence. The Department's Examiners lawfully entered the
21 residence.

22 10. The detective, based on information he obtained, contacted
23 Clearpoint Funding, Inc. and confirmed Respondent Clancey is
24 currently employed by Clearpoint Funding Inc as a mortgage loan
25 originator in Massachusetts. The Department's Examiners also

1 confirmed Respondent Clancey's current employer is Clearpoint
2 Funding through his mortgage loan originator record on the NMLS.

3 11. The Department's Examiners then obtained the Loan Files pursuant
4 to their statutory authority to prevent document destruction.

5 12. Upon detailed review of the Loan Files, the Department's
6 Examiners discovered there was a total of 517 loan files as
7 follows:

- 8 a. 172 New Hampshire loan files;
- 9 b. 259 Massachusetts loan files;
- 10 c. 6 Maine loan files;
- 11 d. 59 Connecticut loan files;
- 12 e. 6 Rhode Island loan files;
- 13 f. 3 Vermont loan files;
- 14 g. 2 Ohio loan files;
- 15 h. 9 New Jersey loan files; and
- 16 i. 1 Michigan loan files.

17 13. Of the 172 New Hampshire loan files, 96 loan files were original
18 documents and 76 loan files were photocopies.

19 14. All of the consumer loan files whose broker was listed as
20 Globelend were dated between November 2006 and August 2008,
21 exactly the same time frame wherein Respondent Clancey was
22 employed by Respondent Globelend.

23 15. On information and belief, Respondent Clancey had originated
24 approximately 38 of the 172 New Hampshire loans found in the
25 residence.

1 16. Respondent Clancey's residence was not the address for
2 Globelend's principal office or New Hampshire branch office.

3 17. At the time the Loan Files were found in the residence,
4 Respondent Clancey was already working for Clearpoint Funding Inc
5 and could not statutorily have been able to work for Clearpoint
6 Funding Inc and be employed or retained by Respondent Globelend
7 as its agent and thus, could not have been legally allowed to
8 keep such Loan Files in his residence.

9 18. The Loan Files normally kept under the control of Respondent
10 Globelend, a previously licensed business location, were
11 unlawfully in Respondent Clancey's possession without apparent
12 authority and such possession amounts to significant violations
13 of RSA Chapter 397-A.

14 19. The unlawful taking of Loan Files may be a violation of other
15 laws, as well (e.g. RSA 637:3,I and RSA 638:11,I).

16 **Violation of Gramm-Leach-Bliley Act, Title V, Section 501(a) via RSA 397-**

17 **A:2,III (1 Count):**

18 **Violation of RSA 397-A:11,I Record Keeping: Failure to Properly Maintain**

19 **Records (98 Counts):**

20 **Violation of RSA 397-A:11,IV Record Keeping: Failure to Preserve Original**

21 **Records (73 Counts):**

22 **Violation of RSA 397-A:6,I Failure to Supervise (98 Counts):**

23 20. Paragraphs 1 through 19 are hereby realleged as fully set forth
24 herein.

25 21. At least ninety-eight (98) Loan Files were taken from Respondent

1 Globelend's offices, most likely its New Hampshire branch office
2 in Nashua, New Hampshire.

3 22. Respondent Clancey was employed by Respondent Globelend as a loan
4 originator during the relevant time periods described above. Of
5 the 98 consumer loan files taken by Respondent Clancey from
6 Respondent Globelend, 73 consumer loan files were or contained
7 originals.

8 23. Respondent Globelend and Respondent Lusher, therefore, did not
9 adequately protect the privacy of its customer's nonpublic
10 financial information when the originals were taken by Respondent
11 Clancey.

12 24. Respondent Globelend and Respondent Lusher failed to properly
13 maintain and preserve its records to prevent Respondent Clancey's
14 unlawful taking of the Loan Files.

15 25. Respondent Globelend and Respondent Lusher failed to supervise
16 their employees (including Respondent Clancey when in their
17 employ) to prevent the unlawful taking of the Loan Files.

18 **II. ISSUES OF LAW**

19 The staff of the Department alleges the following issues of law:

20 1. The Department realleges the above stated facts in Paragraphs 1
21 through 25 as fully set forth herein.

22 2. The Department has jurisdiction over the licensing and regulation
23 of persons engaged in mortgage banker or broker activities
24 pursuant to NH RSA 397-A:2 and RSA 397-A:3.

25 3. RSA 397-A:1,I provides that "agent" means any individual, other

1 than a mortgage banker or mortgage broker, who is employed or
2 retained by a mortgage banker or mortgage broker required to be
3 licensed under RSA Chapter 397-A, and who represents a mortgage
4 banker or mortgage broker in soliciting, finding, negotiating,
5 arranging, or processing mortgage loans.

6 4. RSA 397-A:1,X provides that "licensee" means a person, whether
7 mortgage banker, mortgage broker, or mortgage originator, duly
8 licensed by the Commissioner pursuant to the provisions of RSA
9 Chapter 397-A.

10 5. RSA 397-A:2,III requires persons subject to or licensed under RSA
11 Chapter 397-A to abide by applicable federal laws and regulations,
12 the laws and rules of the State of New Hampshire, and the orders
13 of the Commissioner. Any violation of such law, regulation, order,
14 or rule is a violation of RSA Chapter 397-A. The above named
15 Respondent violated this provision on at least one hundred
16 seventy-two (172) occasions as alleged above.

17 6. RSA 397-A:3,III provides that it is unlawful for any mortgage
18 banker or mortgage broker to employ, retain, or otherwise engage
19 an originator unless the originator is licensed. No originator
20 shall at any time represent more than one mortgage banker or
21 mortgage broker. Respondent Clancey violated this provision on at
22 least one occasion as alleged above.

23 7. RSA 397-A:6,I mandates that licensees supervise their employees,
24 agents, loan originators, and branch offices. Respondent
25 Globelend and Respondent Lusher each failed to adequately

1 supervise and therefore violated this provision on at least
2 ninety-eight (98) occasions as alleged above.

3 8. RSA 397-A:11,I provides that the licensee (defined in RSA 397-
4 A:1,X) shall maintain such records as will enable the Department
5 to determine whether the licensee's business is in compliance with
6 the provisions of RSA Chapter 397-A and the rules adopted thereof.
7 Such records shall be maintained in a readily accessible location
8 and made available for examination at the licensee's New Hampshire
9 principal office or its New Hampshire branch office or the office
10 of its New Hampshire agent for a period of at least 3 years after
11 the loan is closed, if the loan is not retained in the licensee's
12 loan portfolio, or 3 years after the loan is paid in full, if the
13 loan is retained in the licensee's loan portfolio. As evidenced
14 above, Respondent Clancey was the loan officer and was no longer
15 employed or retained as an agent or otherwise by Respondent
16 Globelend or Wells Fargo Home Mortgage when he had the files in
17 his home, which is neither Respondent Globelend's principal office
18 nor its branch office. Respondent Globelend and Respondent Lusher
19 each violated this provision on at least ninety-eight (98)
20 occasions as alleged above.

21 9. RSA 397-A:11,IV provides that licensees must preserve all original
22 business records for as long as the commissioner shall prescribe.
23 Each of the above named Respondents violated this provision on at
24 least seventy-three (73) occasions as alleged above.

25 10. The Gramm-Leach-Bliley Act, Title V, Sec. 501(a) states that it

1 is the policy of the Congress that each financial institution has
2 an affirmative and continuing obligation to respect the privacy
3 of its customers and to protect the security and confidentiality
4 of those customers' nonpublic personal information. Each of the
5 above named Respondents violated this provision on at least one
6 hundred seventy-two (172) occasions as alleged above.

7 11. RSA 397-A:12,XIII provides that the authority for RSA 397-A:12
8 shall remain in effect, whether a licensee or person subject to
9 RSA Chapter 397-A acts or claims to act under any licensing or
10 registration law of the State of New Hampshire, or claims to act
11 without such authority.

12 12. RSA 397-A:12,XIV provides that the authority of RSA 397-A:12
13 shall extend to any person who has custody of or control over
14 documents within the jurisdiction of the Commissioner including
15 but not limited to title companies and other settlement providers
16 who shall provide loan documents to the Commissioner upon
17 request.

18 13. RSA 397-A:12,XV provides no licensee or person subject to
19 investigation or examination under RSA 397-A:12 may knowingly
20 withhold, abstract, remove, mutilate, destroy, or secrete any
21 books, records, computer records, or other information. Such
22 actions shall be fraud under RSA Chapter 397-A.

23 14. RSA 397-A:14,IV(a) provides that no person subject to RSA Chapter
24 397-A shall obtain property by fraud or misrepresentation. The
25 above named Respondent violated this provision on at least one

1 hundred seventy-two (172) occasions as alleged above.

2 15. RSA 397-A:14,IV(f) provides that no person subject to RSA Chapter
3 397-A shall fail to comply with RSA Chapter 397-A or rules or
4 orders promulgated thereunder, or fail to comply with any other
5 state or federal law, including the rules and regulations
6 thereunder, applicable to any business authorized or conducted
7 under RSA Chapter 397-A. The above named Respondent violated this
8 provision on at least one hundred seventy-two (172) occasions as
9 alleged above.

10 16. RSA 397-A:14,IV(n) provides that no person subject to RSA Chapter
11 397-A shall engage in unfair, deceptive, unethical, or fraudulent
12 business practices. The above named Respondent violated this
13 provision on at least one hundred seventy-two (172) occasions as
14 alleged above.

15 17. RSA 397-A:17 provides the Banking Department of the State of New
16 Hampshire (hereinafter the "Department") has the authority to
17 issue an order to show cause why license revocation and penalties
18 for violations of New Hampshire Banking laws should not be
19 imposed.

20 18. RSA 397-A:17,I provides in part that the Commissioner may by
21 order, upon due notice and opportunity for hearing, assess
22 penalties or deny, suspend, or revoke a license or application if
23 it is in the public interest and the applicant, respondent, or
24 licensee, any partner, officer, member, or director, any person
25 occupying a similar status or performing similar functions, or any

1 person directly or indirectly controlling the applicant,
2 respondent, or licensee has, inter alia,: (a) violated any
3 provision of RSA Chapter 397-A or rules thereunder, (b) not met
4 the standards established in RSA Chapter 397-A..., or (k) engaged in
5 dishonest or unethical practices in the conduct of the business of
6 making or collecting mortgage loans. The above named Respondent
7 has violated each subparagraphs (a), (b) and (k) on at least one
8 hundred seventy-two (172) occasions as alleged above.

9 19. RSA 397-A:17,II(a) provides the Commissioner has the authority to
10 order or direct persons subject to RSA Chapter 397-A to cease and
11 desist from conducting business, including immediate temporary
12 orders to cease and desist.

13 20. RSA 397-A:17,II(b) provides the Commissioner has the authority to
14 order or direct persons subject to RSA Chapter 397-A to cease any
15 harmful activities or violations of RSA Chapter 397-A, including
16 immediate temporary orders to cease and desist.

17 21. RSA 397-A:17,II(c) provides the Commissioner has the authority to
18 enter immediate temporary orders to cease business under a
19 license if the Commissioner has determined that such license was
20 erroneously granted or the licensee is currently in violation of
21 RSA Chapter 397-A, or rules or order thereunder.

22 22. RSA 397-A:17,II(e)(1) provides that the Commissioner may issue an
23 order or directive to remove or ban from office or employment,
24 including license revocation, any person conducting business
25 under RSA Chapter 397-A who violates RSA Chapter 397-A.

1 23. RSA 397-A:17,II(e)(4) provides that the Commissioner has the
2 authority to remove or ban from office or employment, including
3 license revocation, any person conducting business under RSA
4 Chapter 397-A if by a preponderance of evidence the Commissioner
5 determines that the person no longer demonstrates the financial
6 responsibility, character, and general fitness such as to command
7 the confidence of the community and to warrant a determination
8 that the person subject to RSA Chapter 397-A will operate
9 honestly, fairly, and efficiently within the purposes of RSA
10 Chapter 397-A.

11 24. RSA 397-A:17,II(f) provides that the Commissioner has the
12 authority to deny, suspend, revoke, condition, or decline to
13 renew a license if an applicant or licensee fails at any time to
14 meet the requirements of RSA 397-A:5,IV-c or RSA 397-A:5,IV-d, or
15 withholds information or makes a material misstatement in an
16 application for a license or renewal of a license. RSA 397-
17 A:5,IV-c,(a)(5) states the Commissioner shall not issue a
18 mortgage loan originator license unless the Commissioner makes at
19 a minimum, inter alia, a finding that the applicant has
20 demonstrated financial responsibility, character, and general
21 fitness such as to command the confidence of the community and to
22 warrant a determination that the mortgage loan originator will
23 operate honestly, fairly, and efficiently within the purposes of
24 RSA Chapter 397-A. RSA 397-A:5,IV-d(a)(1) states that in addition
25 to other provisions of in New Hampshire law and rules in order to

1 be eligible to renew a license, a mortgage originator shall,
2 inter alia, meet and continue to meet the minimum standards for
3 license issuance under RSA 397-A:5,IV-c.

4 25. RSA 397-A:17,VIII provides that in addition to any other penalty
5 provided for under RSA Chapter 397-A or RSA 383:10-d, after
6 notice and opportunity for hearing, the Commissioner may enter an
7 order of rescission, restitution, or disgorgement of profits
8 directed to a person who has violated RSA Chapter 397-A, or a
9 rule or order thereunder.

10 26. RSA 397-A:17,IX provides that in addition to any other penalty
11 provided for under RSA Chapter 397-A, after notice and
12 opportunity for hearing, the Commissioner may assess fines and
13 penalties against a mortgage loan originator in an amount not to
14 exceed \$25,000.00 if the Commissioner finds the mortgage loan
15 originator has violated or failed to comply with the S.A.F.E.
16 Mortgage Licensing Act of 2008, Public Law 110-289, Title V or
17 any regulation or order issued thereunder. Each of the acts
18 specified shall constitute a separate violation. The above named
19 Respondent violated nine (9) separate New Hampshire statutory
20 provisions on at least one hundred seventy-two (172) occasions as
21 alleged above.

22 27. RSA 397-A:17,X provides an action to enforce any provision of RSA
23 Chapter 397-A shall be commenced within 6 years after the date on
24 which the violation occurred.

25 28. RSA 397-A:18,I provides that the Department may issue a complaint

1 setting forth charges whenever the Department is of the opinion
2 that the licensee or person over whom the Department has
3 jurisdiction, has violated any provision of RSA Chapter 397-A or
4 any rule or order thereunder.

5 29. Pursuant to RSA 397-A:18,II, the Department has the authority to
6 issue and cause to be served an order requiring any person
7 engaged in any act or practice constituting a violation of RSA
8 Chapter 397-A or any rule or order thereunder, to cease and
9 desist from violations of RSA Chapter 397-A.

10 30. RSA 397-A:20,IV provides that the Commissioner may issue, amend,
11 or rescind such orders as are reasonably necessary to comply with
12 the provisions of RSA Chapter 397-A.

13 31. RSA 397-A:21,IV provides that any person who, either knowingly or
14 negligently, violates any provision of RSA Chapter 397-A, may
15 upon hearing, and in addition to any other penalty provided for
16 by law, be subject to an administrative fine not to exceed
17 \$2,500.00, or both. Each of the acts specified shall constitute
18 a separate violation, and such administrative action or fine may
19 be imposed in addition to any criminal penalties or civil
20 liabilities imposed by New Hampshire Banking laws.

21 32. RSA 397-A:21,V provides that every person who directly or
22 indirectly controls a person liable under this section, every
23 partner, principal executive officer or director of such person,
24 every person occupying a similar status or performing a similar
25 function, every employee of such person who materially aids in the

1 act constituting the violation, and every licensee or person acting
2 as a common law agent who materially aids in the acts constituting
3 the violation, either knowingly or negligently, may, upon notice
4 and opportunity for hearing, and in addition to any other penalty
5 provided for by law, be subject to suspension, revocation, or
6 denial of any registration or license, including the forfeiture of
7 any application fee, or the imposition of an administrative fine
8 not to exceed \$2,500, or both. Each of the acts specified shall
9 constitute a separate violation, and such administrative action or
10 fine may be imposed in addition to any criminal or civil penalties
11 imposed.

12 33. RSA 397-A:21,VI provides that the attorney general on the
13 Commissioner's behalf, may, with or without prior administrative
14 action by the Commissioner, bring an action against any person in
15 any superior court in New Hampshire to enjoin the acts or
16 practices and to enforce compliance with RSA Chapter 397-A or any
17 rules or orders thereunder. Upon a proper showing, a permanent
18 or temporary injunction, bar, restraining order, or writ of
19 mandamus shall be granted and a receiver may be appointed for the
20 defendant or the defendant's assets. The court shall not require
21 the Commissioner or attorney general to post a bond. The court
22 shall have the power to enforce obedience to such injunction, in
23 addition to all of the court's customary powers, by a fine not
24 exceeding \$10,000.00 or by imprisonment, or both. In a
25 proceeding in superior court under RSA Chapter 397-A:21,VI where

1 the state prevails, the Commissioner and the attorney general
2 shall be entitled to recover all costs and expenses of
3 investigation, and the court shall include the costs in its final
4 judgment.

5 **III. RELIEF REQUESTED**

6 The staff of the Department requests the Commissioner take the following
7 action:

- 8 1. Find as fact the allegations contained in section I of this Staff
9 Petition;
- 10 2. Make conclusions of law relative to the allegations contained in
11 section II of this Staff Petition;
- 12 3. Pursuant to RSA 397-A:17,II (a), (b) and (c) and RSA 397-A:18,II,
13 order Respondent Clancey to cease and desist from conducting
14 business in New Hampshire;
- 15 4. Pursuant to RSA 397-A:17,II (a), (b) and (c) and RSA 397-A:18,II,
16 order Respondent Clancey to cease and desist from violating New
17 Hampshire state law and federal law and any rules or orders
18 thereunder;
- 19 5. Pursuant to RSA 397-A:17,II (a), (b) and (c) and RSA 397-A:18,II,
20 order Respondent Clancey to cease and desist from destroying
21 documents, including but not limited to original, photocopies of,
22 and electronic versions of consumer loan files and supporting
23 documentation thereof;
- 24 6. Pursuant to RSA 397-A:17,II (a), (b) and (c) and RSA 397-A:18,II,
25 order Respondent Clancey to cease and desist from directly or

1 indirectly taking loan files (originals, copies and electronic
2 versions, including the computers themselves);

3 7. Pursuant to RSA 397-A:17,II (a),(b) and (c) and RSA 397-A:18,II,
4 order Respondent Clancey to cease and desist from hiding any
5 additional loan files and computers he may have in his possession
6 and is hereby ordered to immediately bring them to the Department;

7 8. Pursuant to RSA 397-A:17, order Respondent Clancey to show cause
8 why his mortgage loan originator license should not be revoked;

9 9. Pursuant to RSA 397-A:17,II(e)(1), order Respondent Clancey to
10 show cause why he should not be banned or removed from office;

11 10. Pursuant to RSA 397-A:17,VIII, order Respondent Clancey to
12 rescind, give restitution, or disgorge profits;

13 11. Pursuant to RSA 397-A:17,IX, order Respondent Clancey to show
14 cause why, in addition to administrative penalties, he should
15 not be assessed an additional penalty not to exceed \$25,000.00
16 for each violation alleged above.

17 12. Pursuant to RSA 397-A:17, order Respondent Globelend and
18 Respondent Lusher to show cause why their license should not be
19 revoked;

20 13. Assess fines and administrative penalties in accordance with RSA
21 397-A:21, for violations of RSA Chapter 397-A, in the number and
22 amount equal to the violations set forth in section II of this
23 Staff Petition; and

24 14. Take such other administrative and legal actions as necessary for
25 enforcement of the New Hampshire Banking Laws, the protection of

